



6450-01-P

DEPARTMENT OF ENERGY

Adjustment of Indemnification Amount for Inflation

AGENCY: Office of the General Counsel, U.S Department of Energy.

ACTION: Notice of adjusted indemnification amount.

SUMMARY: The Department of Energy (DOE) is announcing the adjusted amount of indemnification provided under subsection 170d. of the Atomic Energy Act of 1954 (AEA), commonly known as the Price-Anderson Act. Subsection 170t. of the AEA requires an inflation adjustment of the indemnification amount at least once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index (CPI) . This notice announces \$13,703,464,000 as the third inflation-adjusted indemnification amount based on the aggregate percentage change in the CPI during the 5-year period from July 1, 2013 to July 1, 2018.

DATES: This action is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Heather Thacker, Attorney Advisor (GC-72), Office of the General Counsel, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-6924.

SUPPLEMENTARY INFORMATION: The Price-Anderson Act (PAA), section 170 of the AEA (42 U.S.C. 2210), establishes a system of financial protection for persons who may be liable for a “nuclear incident,” as defined in section 11q. of the AEA (42 U.S.C. 2014q.). The Price-Anderson Act is administered by DOE with respect to the nuclear activities of contractors

acting on DOE's behalf. Subsection 170d. provides that the Secretary of Energy shall enter into agreements of indemnification with any person who may conduct activities under a contract with DOE that involve the risk of public liability and that are not subject to the financial protection requirements of the Nuclear Regulatory Commission system. DOE's Price-Anderson Act indemnification contract provisions are codified in the Department of Energy Acquisition Regulation (DEAR), which sets forth a standard nuclear indemnification clause, the Nuclear Hazard Indemnity Clause at 48 CFR 952.250-70, that is incorporated into all DOE contracts and subcontracts in which the contractor is under risk of public liability for a nuclear incident or precautionary evacuation, as those terms are defined in the PAA.

Subsection 170t.(2) of the AEA requires that the Secretary adjust for inflation the amount of indemnification provided under an indemnification agreement pursuant to subsection 170d. at least once during each 5-year period following July 1, 2003, in accordance with the aggregate percentage change in the Consumer Price Index (CPI). The CPI is defined in subsection 170t.(3) to mean the CPI for all urban consumers published by the Secretary of Labor. DOE's initial adjustment increased the indemnification amount to \$11.961 billion. 74 FR 52793 (October 14, 2009). The second inflation adjustment, for the period following July 1, 2013, increased the indemnification amount to \$12,697,798,000. 78 FR 56868 (September 16, 2013).

This notice announces DOE's third periodic inflation adjustment for the 5-year period following July 1, 2018 based on the aggregate percentage change in the CPI between July 1, 2013 and July 1, 2018.

The CPI used to calculate the inflation adjustment for the period following July 1, 2013 was 233.504 (June 2013). The CPI used to calculate the inflation adjustment that is the subject of this Notice is 251.989 (June 2018). This difference represents an increase of approximately

7.92%. Application of this increase to the current DOE indemnification amount results in an inflation-adjusted indemnification amount rounded to the nearest thousand of \$13,703,464,000.

The inflation adjustment under AEA, subsection 170t., applies only to a nuclear incident within the United States. There is no corresponding inflation adjustment for a nuclear incident outside the United States. Accordingly, the indemnification amount for a nuclear incident outside the United States continues to be \$500 million.

This notice of adjusted indemnification amount is a “rule” as defined in the Administrative Procedure Act (APA) (5 U.S.C. 551(4)). However, the APA (5 U.S.C. 553(b)(B)) does not require an agency to seek comment on a proposed rule prior to publishing a final rule “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” In this instance, DOE has concluded that solicitation of public comment is unnecessary. Congress has required DOE to adjust the amount of indemnification provided under an agreement of indemnification pursuant to section 170d. to reflect inflation in the initial and each subsequent 5-year period following July 1, 2003. The statute provides no discretion regarding the substance of the adjustment. DOE is required only to perform a ministerial computation to determine the relevant amount. On the same basis, DOE finds good cause, pursuant to 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in the effective date for this rule. As such, this rule is effective **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

DOE has determined that this notice of adjusted indemnification amount is the type of action that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE’s regulations implementing the National Environmental Policy

Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule is covered under the categorical exclusion in paragraph A6 of Appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel’s website: <http://energy.gov/gc/office-general-counsel>. Because DOE, in this final rule, is performing only a ministerial computation to determine the relevant indemnification amount as required by Congress, a general notice of proposed rulemaking is not required, and the analytical requirements of the Regulatory Flexibility Act do not apply to this rulemaking.

Signed in Washington, D.C., on September 24, 2018.

Theodore J. Garrish
General Counsel, Acting.

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